U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: DEC 0 5 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary special education teacher in Baltimore, Maryland. At the time she filed the petition, the petitioner taught kindergarten at in Rosedale, Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 26, 2012. In an introductory statement, counsel stated that the petitioner's "petition for waiver of the labor certification is premised on her Master of Arts in Education and more than forty-one (41) years of inspired, innovative, and progressive teaching experience in both the United States and the Philippines." Academic degrees and experience can provide partial support for a claim of exceptional ability under the USCIS regulations at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B), respectively, but exceptional ability does not establish eligibility for the waiver.

Counsel stated:

> In the Philippines, [the petitioner] became an integral member of the Philippine Department of Education as a general educator. Her acclaimed expertise led the Department to seek her skills in developing a lesson plan in middle school social studies, which was implemented throughout her regional school district. Additionally, [the petitioner's] superb leadership as principal and head teacher helped propel her school as one of the leading early educating institutions in its area; the growth seen by the school under [the petitioner], both physically and in the competency of its faculty, led to being commended by the Department of Education, Philippines as a model institution.
>
> In the U.S., [the petitioner] has continued to develop her well-honed methodologies in both special and general education; her innovative intervention strategies at as a special educator resulted in a 90% increase in student achievement.

Counsel cited no evidence to support the above claim regarding improvements in student achievement at The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, improvement at a single school would not demonstrate that the benefit from the petitioner's work has been or will be national in scope.

The petitioner detailed her teaching experience since 1970 in a 24-page statement, stating that she instituted various programs, said to be still in use, to improve literacy, combat truancy, and otherwise improve and reform the schools where she taught. In the statement, the petitioner asserted: "In 2003, The dream of coming to America was once revived when American people recruited Filipino teachers to fill the shortage of teachers especially in Special Education. teachers especially in Baltimore, Maryland [*sic*]."

The petitioner submitted a printout of an article from the News web site (affiliated with a television network in the Philippines). The article, "Baltimore schoolteachers faring well despite crisis," featured comments from several Filipino teachers working in Baltimore, including the petitioner. The article began:

> The economic crisis may be ravaging most of America, but Filipino teachers here have apparently made their jobs "recession-proof" by burnishing their credentials and endearing themselves to students and school officials alike.
>
> About a thousand Filipino teachers have been hired by the Baltimore public school system since 2003, the increments growing every year. Many of them filled a void in special education (SpEd) and certain subjects like Math, Science, and interestingly, English.

The article did not focus on the petitioner, or provide any information about her except to identify her as "a SpEd teacher at the " The article did not indicate what impact the petitioner or her colleagues have had on the quality of education in Baltimore.

The petitioner submitted copies of various certificates she received from local and regional educational authorities in the Philippines, recognizing her work in capacities such as a "Science Trainor" and a "PROBE implementor," and indicating that her students had performed well on various examinations.

A March 3, 1997 "certification" from of the Philippine Department of Education, Culture, and Sports, Region VII, Division of Cebu, stated:

> This is to certify that [the petitioner] was one of the Lesson Guide Writers in Social Studies for Grade VI and that she was able to develop/evolve 31 Lesson Guides. This is to certify further that these guides were tried out in pilot schools in the districts of , and upon final editing these will be used in the schools in Region VII.

The petitioner submitted no comparable documentation from educational authorities in the United States. The materials do not establish use of her work beyond the regional level in the Philippines or the local level in the United States.

Copies of the petitioner's performance review reports from show ratings of "satisfactory" and "proficient." principal of stated that the petitioner "had an overall rating of Satisfactory" during her six years at the school from 2005 to 2011. The petitioner did not explain how these evaluations set her apart from other teachers to an extent that would justify a waiver of the job offer requirement that, by law, normally applies to the immigrant classification that she has chosen to seek.

Letters from teachers and administrators at and as well as the petitioner's former students (mostly in the Philippines), show that these witnesses consider the petitioner to be a dedicated and conscientious teacher. The letters, however, do not establish that the petitioner meets the requirements outlined in *NYSDOT*.

The director issued a request for evidence on November 7, 2012. The director instructed the petitioner to submit evidence of broader impact and influence. The director stated that, if the petitioner chose to submit evidence regarding awards, the petitioner must submit information about those awards in order to establish their significance.

In response, the petitioner submitted general background information and assertions from counsel. Counsel cited *NYSDOT*: "Neither the statute nor Service regulations define the term 'national interest.' Additionally, Congress did not provide a specific definition of 'in the national interest.'"

Id. at 216. Counsel claimed "[t]he obscurity in the law that NYSDOT sought to address has been clarified":

> [T]he United States Congress has spelled out the national interest with respect to public elementary and secondary school education through the No Child Left Behind Act of 2001 ("NCLB Act"), 20 U.S.C. § 6301 et seq., which came into effect upon its enactment in 2001 – that is, more than a decade after IMMACT 90 and MTINA were enacted and three years after NYSDOT was designated as a precedent decision. . . .
>
> Accordingly, the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public school special education sector.
>
> . . . In effect, therefore, the United States Congress, with the enactment of the NCLB Act, has preempted the USCIS with respect to the parameters that should guide its determination whether a waiver of the job offer requirement based on national education interests is warranted.

The NCLB Act, however, did not amend the Immigration and Nationality Act or mention the national interest waiver. The statute contains several references to "immigrant children and youth" (*e.g.*, section 301 of the NCLB Act bears the title "Language Instruction for Limited English Proficient Children and Immigrant Children and Youth"), but no references to immigrant teachers. The NCLB Act does not refer to section 203(b)(2) of the Act, and the phrase "national interest" does not appear in its text. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95, 113 Stat. 1312 (1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Thus, Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. Absent a comparable provision in the NCLB Act or other education-related legislation, the petitioner has not established that the legislation indirectly implied a blanket waiver for teachers.

Counsel claimed that the NCLB Act gives the petitioner's work national scope because the legislation aimed to effect national-level changes in the quality of public education. This assertion concerns the national scope of public education as a whole, and of the NCLB Act as a statute, but it does not follow that every worker affected by the statute produces national-level benefits at an individual (rather than cumulative) level. Overall benefits produced by a generally applicable statute, such as the NCLB Act, do not entitle every foreign worker covered by that law to special immigration benefits such as the national interest waiver.

Counsel stated: "Given the mediocre performance by American students in Math and Science globally, [the petitioner's] success in the state of Maryland would certainly bear national impact." The petitioner submitted no evidence to show that her individual work had produced "national impact" in the course of six years of employment in a Baltimore public school while the provisions

of the NCLB Act were already in effect. Counsel provided some information about but the petitioner has never worked for that district, and the petitioner did not show that she was responsible for improvements there.

Counsel stated:

> [The petitioner] is one of the 59% [of] special educators in the nation with a Master's degree.
>
> [The petitioner] is one of the 92% [of] special educators with full certification.

The above information indicates that most special education teachers have master's degrees, and almost all of them have "full certification." The petitioner's possession of these commonly-held credentials does not set her apart from others in her field. Given the above figures, those credentials represent a degree of expertise ordinarily encountered in the field of special education, and therefore a master's degree and full certification do not indicate exceptional ability or the higher threshold necessary to qualify for the national interest waiver.

Counsel cited studies indicating that special education teachers "with more training were more likely to indicate they intended to leave." Counsel claimed that, "given [the petitioner's] highly achieved qualifications, she is not one of those with more training more likely to indicate they intended to leave," although the record shows that the petitioner stopped teaching special education students a year before she filed the petition. The same cited studies indicated that the correlation existed only with regard to "intent to leave"; they showed no such correlation with "leaving, moving or exiting." Therefore, the study, as described by counsel, does not appear to show that more highly trained teachers actually act upon their "intent to leave" in greater numbers than other special education teachers.

With respect to the assertion that the petitioner is especially highly trained in special education, she does not appear to hold an academic degree in that specialty. Her bachelor's degree is in "general elementary" education, and her master's degree is in music education.

A local labor shortage does not warrant the national interest waiver, because the labor certification process is already in place to address such shortages. *See NYSDOT* at 218. Counsel claimed: "it has been demonstrated that shortage is not the bench mark of [the petitioner's] request for [the] waiver," but the petitioner's own evidence points toward such a shortage. Baltimore has hired large numbers of foreign teachers – "about a thousand" from the Philippines alone, without considering other countries – and counsel cited information about attrition rates in special education. The petitioner herself stated: "American people recruited Filipino teachers to fill the shortage of teachers especially in Special Education . . . in Baltimore, Maryland."

Counsel claimed that granting the waiver protects the interests of U.S. workers, because the petitioner's students will eventually "more competitive in the job market." Counsel did not establish how the long-term effects of the petitioner's work would have national scope. Because the petitioner has worked with elementary school students, the claimed results would not be evident for several years, and USCIS will

not approve the waiver based on speculative long-term projections unsupported by prior data. *See NYSDOT* at 219.

Counsel claimed that the labor certification process would pose a "dilemma" because the petitioner's qualifications exceed the minimum requirements for the position, and "the employer is required by No Child Left Behind (NCLB) Law . . . to employ highly qualified teachers." Counsel did not show that these two considerations are incompatible. Section 9101(23) of the NCLB Act defines the term "highly qualified teacher." By the statutory definition, a "highly qualified" school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- demonstrates competence in the academic subjects he or she teaches.

Section 9101(23)(A)(ii) of the NCLB Act further indicates that a teacher is not "Highly Qualified" if he or she has "had certification or licensure requirements waived on an emergency, temporary, or provisional basis." Counsel did not explain how the above requirements are incompatible with the existing labor certification process, and the petitioner submitted no evidence that the labor certification has resulted in the widespread employment of teachers who are less than "highly qualified." The minimum degree requirement is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor's degree).

Counsel claimed:

> there is more likelihood than not as dictated by experience that replacing 'Highly Qualified Teachers' with those having only minimum qualification that these federally funded schools would fail to meet the high standard required under the No Child Left Behind (NCLB) Law resulting not only [in] closure of these schools but loss of work for those working in those schools.

Counsel identified no "federally funded school" that has closed as a result of failing to meet NCLB Act standards, and no school that, due to labor certification, has "replac[ed] Highly Qualified Teachers" with less qualified teachers. Counsel's unsupported claim is not evidence. *Matter of Obaigbena* at 634 n.2, citing *Matter of Ramirez-Sanchez* at 506. Also, counsel did not show that awarding the waiver to the petitioner would prevent school closures on a nationally significant scale.

The director had instructed the petitioner to document the importance of the awards she has received. The petitioner did not do so. Instead, counsel listed the certificates a second time, and stated that the petitioner need not establish exceptional ability because she qualifies as a member of the professions holding an advanced degree.

The director denied the petition on May 2, 2013, stating that, while the petitioner made contributions to her particular school, "a national interest waiver cannot be granted simply because the beneficiary

is involved in an important endeavor." The director found that the petitioner had not established the national scope of the petitioner's past or intended future work.

On appeal, counsel repeats several paragraphs from the response to the request for evidence, regarding the claim that Congress intended the NCLB Act to clarify the national interest with respect to education. Counsel quotes section 203(b)(2)(A) of the Act and related legislation, and asserts: "Based on these statutory provisions, the requirement of a job offer or labor certificate for the occupation of Pre-K/Elementary School teacher that [the petitioner] is seeking may be waived if it is established that she will substantially benefit prospectively the national educational interests of the United States." The statute, however, states that an alien who "will substantially benefit prospectively the national . . . educational interests . . . of the United States" must also show that his or her "services . . . are sought by an employer in the United States." The statute acknowledges that every foreign worker who qualifies for classification under section 203(b)(2) of the Act "will substantially benefit prospectively the . . . United States," and imposes the job offer requirement on all those individuals.

Counsel states that the petitioner "framed her national interest waiver application within the context of not only the NCLB Act, but also the Obama administration's current initiatives aimed at enhancing that law." Counsel, however, identifies no statute, regulation, case law, or other policy instrument that creates a blanket waiver for teachers. Counsel has cited a specific section of the NCLB Act (section 5) to show when that law took effect, but counsel has not done the same to support the claim that Congress intended the NCLB Act as an immigration bill for foreign teachers.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). Congress defined teachers as professionals at section 101(a)(32) of the Act, and subjected professionals to the job offer requirement at section 203(b)(2)(A) of the Act. Both of those provisions remain in effect.

Counsel claims: "a new thought process must be designed by USCIS with respect to NIW petitions by 'Highly Qualified Teachers' instead of routinely applying the *Matter of New York State Dept. of Transportation* generically." 8 C.F.R. § 103.3(c) provides that precedent decisions, such as *NYSDOT*, are binding on all USCIS employees in the administration of the Act. Counsel claims that *NYSDOT*, which concerned a bridge engineer, "is good in far as NIW cases filed by Engineers are concerned but does not give justice to other professionals especially since the facts are definitely distinct from each other." The three-part national interest test in *NYSDOT* is, by design, broad and flexible. It does not include specific evidentiary requirements that only an engineer could satisfy, and its application is not, and was not intended to be, limited to engineers.

Counsel contends that *NYSDOT* "requires overly burdensome evidence on the qualification of the self-petitioner, identical to EB-1 extraordinary requirements when the law makes it available to those

either 'with an advanced degree' or 'exceptional ability.'" The evidentiary requirements to establish extraordinary ability appear at 8 C.F.R. § 204.5(h)(3). Those requirements are not "identical" to the guidelines in *NYSDOT*. Concerning counsel's assertion that the waiver is "available to those either 'with an advanced degree' or 'exceptional ability,'" those qualifications make one eligible to apply for the waiver, but do not guarantee the approval of that application.

Counsel claims that the director's request for evidence "required vague and overly burdensome evidence more fitting to the cause of an Engineer." Counsel did not elaborate on this assertion with any example of an evidentiary request that applies to engineers but not to teachers.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." Counsel interprets this passage to mean that Congress created the national interest waiver for educators. President Bush, however, did not mention the national interest waiver in his remarks; he was discussing the Immigration Act of 1990 as a whole, which included provisions that subject members of the professions (including "scientists and engineers and educators") to the job offer requirement.

Counsel states: "The standard in other words is not national geography but national intellection directed to recapture the nation's economic dominance. This is what is called 'Bridging the Gap.' Syllogistically, hiring 'Highly Qualified Teachers' would produce more graduates than dropouts."

The existence of federal education policy does not give national impact to the efforts of one schoolteacher, and the petitioner has not established that the hiring of one "Highly Qualified Teacher" increases graduation rates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Counsel cites various Department of Education publications concerning the goals of the NCLB Act and other federal programs, but no evidence documenting the results of those programs a decade after the NCLB Act's enactment. Instead, counsel cites recent statistics regarding continued poor student performance by students in communities with large populations of underprivileged and minority students, several years after the passage of the NCLB Act. Eligibility for the waiver rests on the merits of the individual seeking the waiver, and the record does not show that the petitioner has had or will have a nationally significant impact on graduation rates. Being a "Highly Qualified Teacher" under the NCLB Act does not establish or imply eligibility for the national interest waiver.

Counsel states:

> USCIS-Texas Service Center has not specified what it meant by 'any contributions of unusual significance that would warrant a national interest waiver.' There is no clarity on this particular requirement and yet, the Director has easily dismissed the incomparable accomplishments of [the petitioner] as submitted in her Case File. By

> requiring the petitioner to submit evidence of ambiguous nature is 'unduly burdensome' and in effect tantamount to requiring 'impossible evidence' for being extremely subjective.
>
> The lack of clear standard on this particular requirement leaves the finding of insufficiency by USCIS-Texas Service Center highly speculative, without factual basis and rather drawn in thin air.
>
> The mandate for 'flexibility in the adjudication of NIW cases' . . . must be construed liberally rather than strictly compared to the New York State Department of Transportation case. USCIS is now required by United States Congress through the No Child Left Behind Act of 2001 . . . to make it "flexible["] and thus possible rather than impossible in favor of the 'Best Interest of the School Children,' by granting waivers to 'Highly Qualified Teachers' who have already been serving the cause instead of requiring labor certification which may only reveal uncommitted U.S. workers with minimum education qualification.

The petitioner has not submitted evidence to establish that her accomplishments are "incomparable." After suggesting that the director's decision is "drawn in thin air," counsel asserts that the NCLBA did not merely imply that USCIS should grant the waiver to "highly qualified teachers," it "required" USCIS to do so. The NCLBA does not establish or imply a blanket waiver for teachers.

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics) and points to her "proven success in raising proficiency of her students." Counsel cites no evidence on appeal to allow a comparison between the petitioner's success in these areas and that of other qualified teachers. Counsel's assertions are not evidence. *Matter of Obaigbena* at 634 n.2, citing *Matter of Ramirez-Sanchez* at 506.

Counsel asserts that the petitioner "has submitted overwhelming evidence" of eligibility, and lists several previously submitted exhibits under the heading "Awards and Recognition." The petitioner has not established that these materials are "overwhelming evidence" in her favor. Local recognition can help support a claim of exceptional ability, under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), but exceptional ability does not establish or imply eligibility for the waiver.

One exhibit that counsel has more than once identified among the "awards and recognition" is the ABS-CBN News story that included interviews with the petitioner and several other Filipino teachers. Counsel stated that this interview shows the petitioner's "recognition as a leader in her community of Filipino educators in the United States," but the article itself never calls her "a leader in her community." It stated that several "teachers converge in [the petitioner's] home . . . for an outreach program of the Philippine Embassy."

Counsel contends "the Director is requiring more from the beneficiary's credentials tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. It is evident from the statute that the threshold for exceptional ability is below,

not above, the threshold for the national interest waiver; it is possible to establish exceptional ability but still not qualify for the waiver. Also, the director did not require the petitioner to establish exceptional ability in her field. Instead, the director found that the petitioner's evidence failed to establish that her work has had an influence beyond the school districts where he has worked.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that the petitioner's influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.").

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession, such as teaching, in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.